

## **REMARKS**

Reconsideration and withdrawal of all grounds of rejection, and allowance of the pending claims are respectfully requested in light of the remarks made herein.

Claims 1-7 are pending and stand rejected.

The specification has been objected to for lacking section headings. Applicant respectfully submits that 37 CFR §1.77(b) discloses a *suggested* format for the arrangement of the disclosure. Applicant respectfully submits that the present disclosure follows the suggested format where applicable. With regard to 37 CFR§1.77(c), which was not cited in the Office Action, Applicant respectfully submits that section headings are suggested but not required, as 37 CFR §1.77(c) clearly states the sections defined in paragraphs (b) (1) through (b) (11) “should” be preceded by a section heading. Applicants respectfully decline at this time to amend the disclosure to include same.

Claims 1-4 and 6-7 stand rejected under 35 USC 103(a) as being unpatentable over Manjunath et al. (USP No. 6,324,503) in view of Suvanen (USP No. 6,633,536). Applicant respectfully disagrees with, and explicitly traverses, the examiner's reason for rejecting the claims. A claimed invention is prima facie obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

Amended Claim 1 recites;

1. A communication system comprising a transmitter, a receiver, and an up/down link communication channel arranged for data communication from the transmitter through the up link communication channel to the receiver, whereby the communication system is further

arranged to feedback data from the receiver through the down link communication channel to the transmitter, wherein the receiver comprises a bad frame indicator for providing a bad frame indication (BFI) upon receipt of a corrupted frame, which is present in synchronized data communicated over the up link communication channel; and that the transmitter comprises resynchronization means coupled to the down link communication channel for receiving BFI related data and in response thereto recommencing data communication over the up link communication channel, in accordance with a resynchronization procedure, which starts from a predetermined state.

Manjunath et al., as read by applicant, teaches a system for providing feedback from decoder to encoder to improve performance in a predictive speech coder under frames erasure conditions. If a transmitted frame is not received by the decoder, a second encoder is used encode and transmit packets and to modify a packet in response thereto, see col. 3, line 65 through col. 4, line 7. Thus, Manjunath et al. teaches the use of a modified packet procedure in frame erasure conditions and not a resynchronization procedure, which starts from a predetermined state, as in the present invention. The addition of Suvanén et al. does not cure the infirmities of Manjunath et al.

Suvanén et al., as read by applicant, teaches a system for signaling in a digital mobile communications system. A good state and a bad state for frame are defined. Bad frames corresponding to the time of message transmission are replaced with a preceding good frame. (see Abstract). Thus, Suvanén et al. teaches to mark and replace bad frames and not a resynchronization procedure, which starts from a predetermined state, as in the present invention.

Neither Manjunath et al. nor Suvanén et al., individually or in combination, discloses or suggests all the elements of the present invention. Further, even if the devices of Manjunath et al. and Suvanén et al., were combined, as suggested by the examiner, the combined device would not disclose all the elements of the invention recited in claim 1 and would not perform the steps disclosed. The combination of

Manjunath et al. and Suvanén et al. would not contain a resynchronization procedure, which starts from a predetermined state.

Having shown that the combined device resulting from the teachings of the cited references does not include all the elements of the present invention, applicant submits that the reasons for the examiner's rejections of the claims have been overcome and can no longer be sustained. Applicant respectfully requests reconsideration, withdrawal of the rejection and allowance of the claims.

In the matter of obviousness there is a great emphasis placed on "the importance of the motivation to combine." For example, the court in Yamanouchi Pharmaceutical Co. v. Danbury Pharmacal, Inc. 231 F. 3d. 1339, 56 USPQ2d. 1641, 1644 (Fed. Cir. 2000) found that:

an examiner ... may often find every element of a claimed invention in the prior art. If identification of each claimed element of the prior art was sufficient to negate patentability, very few patents would ever issue. Furthermore rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner ... to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention ... To counter this potential weakness in the obviousness construct, the suggestion to combine requirements stands as a critical safeguard against hindsight analysis and rote application of the legal test for obviousness. *id.* quoting *In re Rouffet*, 149 F.3d 1350, 1357-58, 47 USPQ 2d 1453, 1457 (Fed. Cir. 1998)

In this case, applicant believes that with regard to the referred-to claims, the examiner has impermissibly incorporated the teachings of the present invention in the cited reference to reject the claims. Accordingly, applicant submits that the reasons for the examiner's rejections of the claims have been overcome and the rejection can no longer be sustained. Applicant respectfully requests reconsideration, withdrawal of the rejection and allowance of the claims.

With regard to claims 2-4 and 6-7, these claims ultimately depend from independent claim 1, which has been shown to be not obvious and allowable in view of the cited references. Accordingly, claims 2-4 and 6-7 are also allowable by virtue of their dependence from an allowable base claim.

Claim 5 stands rejected under 35 USC 103(a) as being unpatentable over Manjunath et al. (USP No. 6,324,503) in view of Suvanen (USP No. 6,633,536) in further view of Yau (Pub. No. US2002/0114342).

Applicant respectfully disagrees with, and explicitly traverses, the examiner's reason for rejecting the claims. However, as shown previously, claim 1 contains subject matter not disclosed by the cited reference. Hence, even if the teachings of Yau were applied to Manjunath et al. and Suvanen et al., the system would not including all the elements recited in the claims.


Accordingly, applicant's remarks made in response to the examiner's rejection of claims 1-4 and 6-7 are also applicable in response to the examiner's rejection of claim 5. Applicant, therefore, submits that in view of the remarks made with regard to the rejection of claims 1-4 and 6-7, which are repeated herein in response to the rejection of claim 5, the examiner's reasons for rejecting claim 5 have been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

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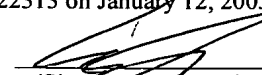
  
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